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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

SILVIA SANDOVAL,

Plaintiff,

v.

ALBERTSONS, LLC d/b/a ALBERTSONS;
DOES I-X, inclusive, and ROE
CORPORATIONS I-X, inclusive,

Defendants.

CASE NO.: 2:17-cv-00959-APG-PAL

**STIPULATION AND ORDER TO
EXTEND DISCOVERY DEADLINES**

[THIRD REQUEST]

The undersigned, on behalf of Plaintiff, SILVIA SANDOVAL, and ALBERTSONS, LLC d/b/a ALBERTSONS, hereby stipulate to extend the remaining deadlines in the current scheduling order and discovery plan in this matter for a period of forty-five (45) days for the reasons explained herein, and under Local Rule 6-1(b).

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I.

DISCOVERY COMPLETED TO DATE

1. The Parties have conducted an FRCP 26(f) conference and have served their respective FRCP 26(a) disclosures;

2. Defendant has served on Plaintiff Interrogatories, Requests for Admissions, and Requests for Production, and Plaintiff has served responses thereto;

3. Plaintiff has served on Defendant Requests for Admission, Interrogatories, and Requests for Production, and Defendant has served responses thereto;

4. Defendant has served on Plaintiff Second Request for Production, and Plaintiff has served responses thereto;

5. Plaintiff has served on Defendant Second Requests for Admission, Second Interrogatories, and Defendant has served responses thereto;

6. The deposition of Plaintiff;

7. The deposition of Evelin Espinoza;

8. The deposition of Hector Garcia;

9. The deposition of Veronica Prieto;

10. The deposition of Juan Espinoza; and

11. The deposition of Alex Pasaphong.

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2 **II.**

3 **DISCOVERY TO BE COMPLETED**

- 4 1. Additional written discovery;
5 2. Depositions of Kristi Fridley; and
6 3. Deposition of Defendant's 30(b)(6) witness.
7

8 **III.**

9 **REASON THAT DISCOVERY HAS NOT YET BEEN COMPLETED**

10 This is the third stipulation for extension of time. The enlargement of time
11 periods, including discovery deadlines, is governed by F.R.C.P. 6(b), which states:
12

13 When by these rules or by a notice given thereunder or by order of court
14 an act is required or allowed to be done at or within a specified time, the
15 court for cause shown may at any time in its discretion (1) with or without
16 motion or notice order the period enlarged if request therefor is made
17 before the expiration of the period originally prescribed or as extended by
18 a previous order, or (2) upon motion made after the expiration of the
19 specified period permit the act to be done where the failure to act was the
20 result of excusable neglect; but it may not extend the time for taking any
21 action under Rules 50(b) and (c)(2), 52(b), 59(b), (d) and (e), 60(b), and
22 74(a), except to the extent and under the conditions stated in them.

19 The Local Rules of the United States District Court for the District of Nevada
20 include additional provisions relating to the extension or reopening of discovery.
21 Specifically, Local Rule 6-1 governs requests for continuances and extensions in
22 general, stating:
23

24 (a) Every motion requesting a continuance, extension of time,
25 or order shortening time shall be Filed by the clerk and processed as an
26 expedited matter. Ex parte motions and stipulations shall be governed by
27 LR 6-2.

27 (b) Every motion or stipulation to extend time shall inform the court of any
28 previous extensions granted and state the reasons for the extension
requested A request made after the expiration of the specified period shall

1 not be granted unless the moving party, attorney, or other person
2 demonstrates that the failure to act was the result of excusable neglect.
3 Immediately below the title of such motion or stipulation there shall also be
4 included a statement indicating whether it is the first, second, third, etc.,
5 requested extension, i.e.:

6 STIPULATION FOR EXTENSION OF TIME TO FILE MOTIONS (First
7 Request)

8 (c) The court may set aside any extension obtained in contravention of this
9 rule.

10 (d) A stipulation or motion seeking to extend the time to file an opposition
11 or final reply to a motion, or to extend the time fixed for hearing a motion,
12 must state in its opening paragraph the filing date of the motion.

13 Local Rule 26-4 specifically refers to the extension of scheduled deadlines,
14 stating:

15 Applications to extend any date set by the discovery plan,
16 scheduling order, or other order must, in addition to satisfying the
17 requirements of LR 6-1, be supported by a showing of good cause for the
18 extension. All motions or stipulations to extend discovery shall be received
19 by the court within twenty (20) days before the discovery cut-off date or
20 any extension thereof.

21 Any motion or stipulation to extend or to reopen discovery shall include:

- 22 (a) A statement specifying the discovery completed;
23 (b) A specific description of the discovery that remains to be completed;
24 (c) The reasons why discovery remaining was not completed within the
25 time limits set by the discovery plan; and
26 (d) A proposed schedule for completing all remaining discovery.

27 The Parties' failure to timely request an extension of the discovery deadline
28 under Local Rule 26-4 results from excusable neglect. Before 1993, a conflict existed
between the Courts of Appeals as to the meaning of excusable neglect. In 1993,
however, the United States Supreme Court resolved this conflict with its decision
in *Pioneer Investment Services v. Brunswick Associates, Ltd.*, 507 U.S 380 (1993). By
empowering the courts to accept late filings where failing to act resulted from
excusable neglect, Congress plainly contemplated that the courts would be permitted,

1 where appropriate, to accept late filings caused by inadvertence, mistake, or
2 carelessness, and by intervening circumstances beyond the party's control. *Id.* at 388.
3 The Parties' failure to request an extension of discovery twenty (20) days before
4 the discovery deadline under LR 26-4 constitutes excusable neglect.
5 The discovery deadline should be extended.
6

7 *Pioneer's* liberal definition of excusable neglect is applicable beyond the
8 bankruptcy context where it arose. *Weinstock v. Cleary, Gottlieb, Steen & Hamilton*, 16
9 F.3d 501, 503 (2d Cir. 1994). Although the decision in *Pioneer* arose out of the context
10 of a Bankruptcy Rule 9006 in a bankruptcy proceeding, the term excusable neglect is
11 used throughout the Federal Rules of Civil Procedure in several places. For example,
12 under Rule 6(b), where the specified period for performing an act has elapsed, a district
13 court may enlarge the period and permit the tardy act where the omission results from
14 excusable neglect. *Pioneer*. 507 U.S. at 391. There is no indication that anything other
15 than the commonly accepted meaning of the phrase was intended by its drafters. *Id.* Not
16 surprisingly, in applying Rule 6(b), the Courts of Appeals have recognized
17 that excusable neglect may extend to inadvertent delays. *Id.* at 391-392.
18
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20 Determining whether a party's neglect of a deadline is excusable requires the
21 review of several factors. Because Congress has provided no other guideposts for
22 determining what sorts of neglect will be excusable, the determination is equitable,
23 taking account of all relevant circumstances surrounding the party's omission. *Id.* at 395.
24 The factors include: (1) the danger of prejudice to the opposing party, (2) the length of
25 the delay and its potential impact on judicial proceedings, (3) the reason for the delay,
26 including whether it was within the reasonable control of the movant, and (4) whether
27
28

1 the movant acted in good faith. *Id.* In *Committee for Idaho's High Desert, Inc. v. Yost*, 92
2 F.3d 814 (9th Cir. 1996), the Ninth Circuit held that the Supreme Court's analysis
3 of excusable neglect in *Pioneer* applies to Rule 6(b). Similarly, the Ninth Circuit adopted
4 the *Pioneer* test for Rule 60(b)(1) cases in *Briones v. Riviera Hotel & Casino*, 116 F.3d
5 379, 381 (9th Cir. 1997).

6
7 In *Briones*, 116 F.3d at 381, the Ninth Circuit noted that *Pioneer* changed its law
8 on excusable neglect. *Bateman v. U.S. Postal Service*, 231 F.3d 1220 (9th Cir. 2000).
9 Before *Pioneer*, the Ninth Circuit had held that ignorance of court rules did not
10 constitute excusable neglect and had applied a per se rule against granting relief when
11 a party failed to comply with a deadline. *Id.* (citing *Briones*.) After *Pioneer*, however, the
12 Ninth Circuit recognized that the term excusable neglect covers cases of negligence,
13 carelessness, and inadvertent mistake. *Id.*

14
15 Here, the Parties have admittedly failed to request the subject extension earlier
16 than twenty (20) days before the disclosure deadlines in the Stipulated Discovery Plan.
17 On November 15, 2017 and November 27, 2017, Plaintiff's office contacted Defense
18 counsel to arrange a date to conduct the depositions of Mike Kinne, Kristi Findley, and
19 Defendant's 30(b)(6) witness. However, Plaintiff's counsel never received deposition
20 availability of the foregoing witnesses. Therefore, Plaintiff unilaterally noticed the
21 depositions of Defendant's 30(b)(6) witness for December 12, 2017. In addition, Plaintiff
22 unilaterally noticed the depositions of Mike Kinne and Kristi Fridley for December 15,
23 2017. On November 28, 2017, Plaintiff's counsel spoke with Defense counsel
24 telephonically and Defense counsel was agreeable to the dates that Plaintiff unilaterally
25 set for the depositions of Mike Kinne, Kristi Findley, and Defendant's 30(b)(6) witness.
26
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1 On December 6, 2017, Plaintiff's counsel's office wrote Defense counsel to
2 confirm that Mike Kinne, Kristi Findley, and Defendant's 30(b)(6) witness would be able
3 to attend the deposition scheduled for December 15, 2017. Defense counsel responded
4 on December 7, 2017, that he could not confirm whether the depositions would be able
5 to go forward since the adjuster assigned to this case recently resigned.

6
7 On December 11, 2017, Defense counsel noted that a new adjuster had still not
8 been reassigned to the case, and as a result, Defendant's 30(b)(6) witness' deposition
9 and Kristi Fridley's deposition would not be able to go forward. This is because
10 ALBERTSONS, LLC d/b/a ALBERTSONS had yet to provide the dates of availability.

11
12 On December 12, 2017, Plaintiff took a non-appearance for Defendant's 30(b)(6)
13 witness. On December 15, 2017, Plaintiff took a non-appearance for Kristi Fridley's
14 deposition.

15 ***1. No Party Will Be Prejudiced in Any Manner By an Extension of***
16 ***the Discovery Period.***

17 No party will be prejudiced by an extension of the discovery deadline. Notably,
18 both Parties agree that an extension would be beneficial. An extension will allow each
19 party to further prepare its respective case for trial. Forcing the Parties to proceed to
20 trial without the necessary discovery will affect every aspect of the trial. It will manifestly
21 prejudice both sides ability to prepare and present their respective cases. *See Martel v.*
22 *County of Los Angeles*, 34 F.3d 731, 735 (9th Cir. 1994).

24 ***2. The Parties' Delay Was Not Long and Will Not Adversely Impact These***
25 ***Proceedings.***

26 The extension or reopening of discovery in this matter will not result in prejudice
27 to any party. Likewise, such an extension will not hurt the proceedings in this Court. The
28

1 Parties have acted promptly to request an extension. Additional discovery should be
2 allowed.

3 **3. The Movant Acted in Good Faith at All Times.**

4 Here, both Parties are agreeable to the extension and have acted in good faith to
5 request the same. The Parties have no intent, nor reason, to delay the resolution. Both
6 Parties eagerly look forward to attempting to resolve this matter.
7

8 So, a review of the preceding factors reveals that—although the Parties' failure to
9 request an extension within 20 days of the initial expert disclosure deadline may
10 constitute neglect—it is excusable.

11 **4. There are Strong Compelling Circumstances to Grant an Extension**

12 Here, Plaintiff's Counsel initially contacted Defense Counsel on November 15,
13 2017, seeking deposition availability of their disclosed witnesses. It has been over one
14 month now and Defense counsel has not been provided deposition dates from his
15 carrier due to the assigned adjuster on the case resigning. To this date, Defense
16 counsel still has not been provided deposition availability for Kristi Fridley and their
17 30(b)(6) witness.
18

19 Further, Defendant's 30(b)(6) witness is pivotal to this case. Specifically, Plaintiff
20 has intentions of filing a motion for spoliation of evidence on several issues including: 1)
21 lost video; 2) lost sweep logs; and 3) a lost incident report. To bind the company and to
22 prove that Defendant's conduct violated company policy, it is imperative that Plaintiff's
23 counsel take the deposition of Defendant's 30(b)(6) witness.
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V.

PROPOSED NEW DISCOVERY DEADLINES

Discovery Cut-off	April 16, 2018
Expert Disclosures	February 16, 2018
Rebuttal Expert Witness Disclosures	March 19, 2018
Amend Pleadings	February 16, 2018
Joint Pre-Trial Order	June 18, 2018
Interim Status Report	February 16, 2018
Dispositive Motions	May 15, 2018

DATED this 20th day of December, 2017.

DE CASTROVERDE LAW GROUP

By: /s/ David Menocal
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Attorney for Plaintiff

DATED this 20th day of December 2017.

**MORAN BRANDON BENDAVID
MORAN**

By: /s/ Kris Klingensmith
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IT IS SO ORDERED:


UNITED STATES MAGISTRATE JUDGE

DATED: January 8, 2018